

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B05

PLR-138949-09

Date:

December 07, 2009

LEGEND

OldCo =

Parent =

Sub1 =

Sub2 =

Sub3 =

Sub4 =

Sub5 =

StateA =

Taxable Year =

DateA =

DateB =

DateC =

DateD =

Parent Official =

Tax Professional1 =

Tax Professional2 =

Tax Professional3 =

Dear :

This letter responds to a letter dated August 17, 2009, submitted on behalf of Parent, requesting the Internal Revenue Service ("Service") to grant an extension of time under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations to file an election. The extension is being requested for Parent and its includible subsidiaries to make an election to file a consolidated Federal income tax return, with Parent as the common parent, under § 1.1502-75(a)(1) of the Income Tax Regulations (hereinafter referred to as "the Election") effective for Taxable Year. Additional information was submitted in correspondence dated November 13, 2009. The material information submitted is summarized below.

Parent, a domestic corporation incorporated on or about DateA under the laws of StateA, is engaged in acting as a holding company. On DateB, Parent acquired all the stock in OldCo from OldCo's shareholders in exchange for Parent stock. OldCo has merged with and into Sub1 with OldCo going out of existence and Sub1 surviving. The

assets previously held by OldCo are now held by Sub1, Sub2, and Sub3. As of the end of Taxable Year, Parent directly held all the stock in Sub1, Sub2, Sub3, Sub4, and Sub5. Parent and its subsidiaries constitute the Parent affiliated group.

The Parent affiliated group ("ParentGroup") intended to file a consolidated return for Taxable Year. The Election was due on DateC. However, for various reasons, a valid Election by Parent was not filed. Subsequently, on or about DateD, it was discovered that a valid Election had not been filed. Thereafter, this request was submitted, under § 301.9100-3, for an extension of time to file a valid Election for ParentGroup.

REPRESENTATIONS

(a) Each of Parent and Subs1-5 is a domestic entity that is taxable as a corporation.

(b) Except for the failure to file a consolidated Federal income tax return, Parent and the ParentGroup's members were eligible to file a consolidated Federal income tax return for Taxable Year.

(c) For Taxable Year and all subsequent years, all of the members of the ParentGroup will be included on the affiliations schedule, Form 851, attached to the consolidated Federal income tax returns filed by ParentGroup and any successor group.

(d) As of the date the request for this ruling letter was submitted, the Service had not contacted Parent, or any other member of ParentGroup concerning ParentGroup's failure to timely file a consolidated Federal income tax return for Taxable Year.

(e) The period of limitations on assessment under § 6501(a) of the Internal Revenue Code ("Code") has not expired for Parent's (or any other ParentGroup member's) taxable year for which the Election should have been filed or for any taxable years that would have been affected by the Election had it been timely filed.

APPLICABLE LAW

Section 1.1502-75(a)(1) provides that an affiliated group of corporations which did not file a consolidated return for the immediately preceding taxable year may file a consolidated return in lieu of separate returns for the taxable year, provided that each corporation which has been a member of the group during any part of the taxable year for which the consolidated return is to be filed consents to the regulations under § 1502, in accordance with § 1.1502-75(b)(1). If a group wishes to exercise its privilege of filing a consolidated return, such consolidated return must be filed not later than the last day prescribed by law (including extensions of time) for filing the common parent's return.

Under § 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-1(b) defines the term “regulatory election” as including an election whose due date is prescribed by a regulation, revenue ruling, revenue procedure, notice, or announcement. Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election.

Section 301.9100-1(a) describes the Commissioner’s authority to grant an extension of time to make a regulatory election. Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making regulatory elections that do not meet the requirements of § 301.9100-2. Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith and that granting relief will not prejudice the interests of the Government. Section 301.9100-3(a).

In this case, the time for filing the Election is fixed by the regulations (i.e., § 1.1502-75(a)(1)). Therefore, the Commissioner has discretionary authority under § 301.9100-1 to grant an extension of time for Parent and its subsidiaries to file the Election, provided that Parent and its subsidiaries show they acted reasonably and in good faith, that the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and that granting relief will not prejudice the interests of the Government.

Information, affidavits, and representations submitted by Parent, Parent Official, and Tax Professionals1-3 explain the circumstances that resulted in the failure to timely file the Election. The information establishes that Parent reasonably relied on a qualified tax professional who failed to make, or advise Parent to make, the Election. In addition, the information, representations, and affidavits submitted indicate that the present request for relief was submitted to this office prior to the Service discovering that the Election had not been timely made. See § 301.9100-3(b)(1)(i) and (v).

CONCLUSION AND GRANT OF EXTENSION

Based solely on the information and affidavits submitted and the representations made, we conclude that Parent and its subsidiaries have shown that they acted reasonably and in good faith in failing to timely file the Election, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the Government.

Provided ParentGroup qualifies substantively to file a consolidated return for Taxable Year, we grant an extension of time under § 301.9100-3, until sixty (60) days from the date on this letter (PLR-138949-09), for ParentGroup to file the Election by filing a consolidated return for Taxable Year in accordance with all applicable regulations. See § 1.1502-75(a)(1).

The above extension of time is conditioned on the tax liability (if any) of ParentGroup, and, also, the tax liability (if any) of any consolidated group of which a member of ParentGroup becomes a member, being not lower, in the aggregate, for all years to which the Election applies, and all subsequent years, than it would have been if the Election had been timely made (taking into account the time value of money). No opinion is expressed as to the amount of tax liability for the years involved. A determination thereof will be made by the applicable Director's office upon audit of the Federal income tax returns involved. Further, no opinion is expressed as to the Federal income tax effect, if any, if it is determined that the amount of tax liability is lower. Section 301.9100-3(c).

CAVEAT

We express no opinion as to whether, in fact, Parent and its subsidiaries qualify substantively to file a consolidated return for Taxable Year or any other taxable year. Furthermore, except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any matter or item discussed or referenced in this ruling letter.

In addition, we express no opinion as to the tax effects or any other tax consequences of filing the Election late under the provisions of any other section of the Code and regulations, or as to the tax treatment of any conditions existing at the time of, or effects resulting from, filing the Election late that are not specifically set forth in the above ruling. Notwithstanding that an extension is granted under § 301.9100-3 to file the Election, penalties and interest that would otherwise be applicable, if any, continue to apply.

For purposes of granting this relief, we relied upon certain information, representations, and affidavits submitted by Parent, Parent Official, and Tax Professionals1-3, with all submissions accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. The Director should verify all essential facts.

PROCEDURAL STATEMENTS

This ruling letter is directed only to the taxpayer(s) who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, a taxpayer filing its return electronically may satisfy this requirement by attaching to the return a statement that provides the date and control number (PLR-138949-09) of this ruling letter.

Pursuant to a Power of Attorney on file in this matter, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Ken Cohen

Ken Cohen
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel
(Corporate)